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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
10 AT TACOMA

11 JENNIFER LEUNG,

12 Plaintiff,

13 v.

14 THE UNITED STATES, THE UNITED  
15 STATES TRUSTEE, NORTH  
16 CASCADE TRUSTEE SERVICES,  
17 INC.,

18 Defendants.

CASE NO. 3:18-cv-05491-RJB

ORDER

19 THIS MATTER has not formally commenced, because Plaintiff has not paid the filing  
20 fee or been given leave to proceed *in forma pauperis*. See Dkt. 2. Plaintiff has until July 19, 2018  
21 to cure this defect, or the case will be dismissed on those grounds. *Id.*

22 The Court has also reviewed the Proposed Complaint, Dkt. 1, which fails to state a claim.  
23 As discussed below, Plaintiff should be given the chance to amend the Proposed Complaint, but  
24 if she fails to do so, the case will be dismissed.

1       **Review of the Proposed Complaint.** The Court has carefully reviewed the Proposed  
2 Complaint. Because Plaintiff filed this complaint *pro se*, the Court has construed the pleadings  
3 liberally and has afforded Plaintiff the benefit of any doubt. *See Karim-Panahi v. Los Angeles*  
4 *Police Dep't*, 839 F.2d 621, 623 (9th Cir.1988).

5       According to the header of the Proposed Complaint, the pleading is a “common law  
6 petition for redress of grievance via writ of habeas corpus, administrative law and other  
7 challenges.” Dkt. 1 at 1. The Proposed Complaint outlines the purported historical origins of the  
8 writ of habeas corpus from thirteenth century England through the congressional history of the  
9 United States Congress, in what appears to be an attempt to create a habeas corpus claim under  
10 common law “for redress against unlawful servitude, confinement, encroachment upon  
11 liberties/rights.” Under this theory, it appears the Proposed Complaint seeks to strike certain  
12 federal and state banking and regulatory statutes as unconstitutional. *See id.* at ¶¶30-46. Plaintiff  
13 seeks to vindicate her constitutional rights “to be at liberty, the right to property, the right to  
14 contract, the right to be recognize [*sic*] as having obtained the age of majority, the right to be  
15 competent.” *Id.* at 24. It is alleged that “any restraint” on these rights “is cognizable under the  
16 right to petition for habeas corpus.” *Id.*

17       The only fact that appears to pertain to any of the parties directly is a reference to a date  
18 in 2017, where, it is alleged: “On or about November 03, 2017 the defendant each of them  
19 received a complaint in the form of the dispute to their claims, to the present day there has been  
20 not one single response as required by law.” *Id.* at ¶47.

21       **Standard on Review of a Complaint.** Pursuant to Fed. R. Civ. P. 8 (a):

22       **Claim for Relief.** A pleading that states a claim for relief must contain:  
23       (1) a short and plain statement of the grounds for the court's jurisdiction, unless  
24       the court already has jurisdiction and the claim needs no new jurisdictional  
      support;

- 1 (2) a short and plain statement of the claim showing that the pleader is entitled to  
relief; and  
2 (3) a demand for the relief sought, which may include relief in the alternative or  
different types of relief.  
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4 While the pleading standard under Rule 8 “does not require ‘detailed factual allegations,’ it  
demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Ashcroft*  
5 *v. Iqbal*, 129 S. Ct. 1937, 1949 (2009). Although pleadings drafted by a party proceeding *pro se*  
6 must be read more liberally than pleadings drafted by counsel, a *pro se* litigant is not excused  
7 from knowing the most basic pleading requirements. *See American Ass’n of Naturopathic*  
8 *Physicians v. Hayhurst*, 227 F.3d 1104, 1107-08 (9th Cir. 2000).  
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10 ***Sua Sponte Dismissal.*** A federal court may dismiss a case *sua sponte* pursuant to Fed.  
R. Civ. P. 12(b)(6) when it is clear that the plaintiff has not stated a claim upon which relief may  
11 be granted. *See Omar v. Sea-Land Serv., Inc.*, 813 F.2d 986, 991 (9th Cir.1987) (“A trial court  
12 may dismiss a claim *sua sponte* under Fed. R. Civ. P. 12(b)(6). Such a dismissal may be made  
13 without notice where the claimant cannot possibly win relief.”). *See also Mallard v. United*  
14 *States Dist. Court*, 490 U.S. 296, 307-08 (1989) (there is little doubt a federal court would have  
15 the power to dismiss frivolous complaint *sua sponte*, even in absence of an express statutory  
16 provision). A complaint is frivolous when it has no arguable basis in law or fact. *Franklin v.*  
17 *Murphy*, 745 F.2d 1221, 1228 (9th Cir. 1984).  
18

19 By statute, district courts have jurisdiction to grant a writ of habeas corpus to persons “in  
custody.” 28 U.S.C. §2241. Although not exclusively so, “In England, as in the United States,  
20 the chief use of habeas corpus has been to seek the release of persons held in actual, physical  
21 custody in prison or jail.” *Jones v. Cunningham*, 371 U.S. 236, 238 (1963).  
22

23 From the bare facts alleged, it is unclear whether Plaintiff is in formal custody. If not, it is  
unclear why Plaintiff’s circumstances, factually speaking, are custody-like, sufficient to invoke  
24

1 federal habeas protections. The Proposed Complaint is otherwise full of legal conclusions,  
2 jargon, and historical background. As presently alleged, the pleadings do not articulate a set of  
3 facts sufficient to state a habeas corpus claim, even when considering the Proposed Complaint  
4 with generous liberality. The Proposed Complaint does not allege a set of facts upon which relief  
5 can be granted.

6 Unless it is absolutely clear that no amendment can cure the defect, a *pro se* litigant is  
7 entitled to notice of the complaint's deficiencies and an opportunity to amend prior to dismissal  
8 of the action. *See Lucas v. Dep't of Corr.*, 66 F.3d 245, 248 (9th Cir.1995). Therefore, Plaintiff  
9 should be given leave to file a Proposed Amended Complaint, in writing, by July 19, 2018 to  
10 cure the failure to state a claim. The failure to file a Proposed Amended Complaint will result in  
11 dismissal of the case pursuant to Fed. R. Civ. P. 12(b)(6).

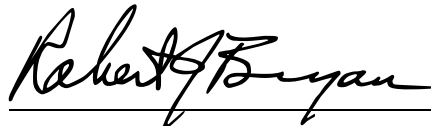
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13 Accordingly, it is hereby **ORDERED** that:

14 Plaintiff **IS GRANTED LEAVE** to file a Proposed Amended Complaint, in writing, by  
15 **July 19, 2018**, if Plaintiff wishes. The failure to file will result in dismissal of the case pursuant  
16 to Fed. R. Civ. P. 12(b)(6).

17 The Clerk is directed to send uncertified copies of this Order to all counsel of record and  
18 to any party appearing *pro se* at said party's last known address.

19 Dated this 25<sup>th</sup> day of June, 2018.

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22 ROBERT J. BRYAN  
23 United States District Judge  
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